IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9256 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N.C.NAVIN

Versus

GENERAL MANAGER BANK OF INDIA

Appearance:

MR IS SUPEHIA for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

NANAVATI ASSOCIATES for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/09/2004

CAV JUDGEMENT

1.0 By way of this petition the petitioner has challenged the order of dismissal from service dated 5.9.2001 and to reinstate the petitioner in service with all consequential benefits including backwages with 12% interest. The petitioner has also challenged the

appellate order dated 17th April 2002 and the order dated 28th March 2003 passed in the Review Application.

2.0 The petitioner was serving as Chief Officer, Corporate Service Department, Bank of India. A chargesheet date 7th June 2000 was served to the petitioner for holding a departmental inquiry in respect of four charges. One Shri Raj Bahadur, Deputy Chief Regional Manager was appointed to hold the departmental inquiry against the petitioner. The Inquiry Officer, after holding the inquiry, submitted his report dated 28.9.2000 and held that all the charges leveled against the petitioner were proved.

2.1 The Chief Regional Manager, after getting the inquiry report by letter dated 9.11.2000 called the petitioner to make his submission in respect of the inquiry report and the petitioner filed his reply on 20.11.2000.

2.2 After considering the reply of the petitioner, the Zonal manager, the respondent no.2 herein, by order dated 5.9.2001 imposed a penalty of dismissal from service on the petitioner.

2.3 The petitioner filed appeal against the order of dismissal which came to be dismissed by order dated 17.4.2002. The petitioner filed Review Application which also came to be dismissed by order dated 28.9.2002. Thereafter the petitioner filed a mercy appeal on 22.1.2003 which also came to be rejected by order dated 28.2.2003. Therefore the petitioner has approached this Court.

3.0 The contentions raised on behalf of the petitioner can be summarized as under:

[i] That the departmental proceedings are not conducted in just and fair manner inasmuch as the petitioner did not have a fair and just departmental inquiry against him.

[ii] The departmental proceedings were held in hot hurry and witnesses of the petitioner could not be examined because of the hurried departmental proceedings conducted by the respondent authorities.

[iii] That the department has approbated and reprobated inasmuch as though the alleged irregularity was committed at Ahmedabad, the

inquiry was conducted at Jharkand and therefore the inquiry is required to be quashed on the ground of approbate and reprobate on the part of the respondent bank.

[iv] That the management witnesses were not allowed to be examined fully.

[v] That the statement of the petitioner was not recorded and defence of the petitioner was not found on record.

[vi] That the order of dismissal was passed by the person who has not appointed the petitioner and therefore the order is bad in law and deserves to be dismissed. In short, the respondent no.2 had no authority to dismiss the petitioner from service inasmuch as he is neither Appointing Authority nor the Disciplinary Authority of the petitioner.

[vii] That assuming everything is against the petitioner, then also the penalty imposed upon the petitioner is disproportionate to the charges leveled against the petitioner inasmuch as various suits were filed and majority of the amount is already recover and if the petitioner would have been allowed to continue at Ahmedabad, he could have recovered the full amount.

4.0 Mr Chudgar, learned counsel for the respondent Bank submitted that the charges levelled against the petitioner are of very serious nature. He submitted that due to the misconduct of the petitioner the bank had incurred a loss of over 45 lacs. According to him the petitioner was given reasonable opportunity before passing the order of penalty. He also submitted that the petitioner had cross-examined the witness, but in spite of the assurance given on 21st August 2002 he has not produced the list of witnesses on 1st September 2002. Moreover, the petitioner has signed when the Inquiry Officer has declared that the inquiry was over. He therefore submitted that no interference is required to be called for in the present petition under Article 226 of the Constitution of India.

5.0 The charges levelled against the petitioner as found in the Inquiry Report are as under:

"Articles of Charge I: On 6.7.1998 you opened

C/D A/C No.2023 in the name of Shri Bharat K. Patel & in order to comply with the Bank's requirement of introduction, you asked Shri S.R. Patel, holder of C/D A/c No.1332 to introduce the said C/D A/c No.2023 of Shri Bharat K. Patel knowing fully well that Shri S.R. Patel did not know Shri Bharat K. Patel and as such his introduction could not be accepted as per the bank's laid down norms. At the request of Shri Bharat K. Patel, on 5.9.1998 he also opened another C/D A/c No.2028 in the name of M/s Continental Textile Mills Ltd. in gross violation of Bank's laid down norms and procedure with regard to opening of C/D A/c number of a private limited company. This account was allowed to be operated upon by Shri Bharat K. Patel without ensuring whether Mr. Bharat K. Patel was authorized to open and operate the account in the name of the said company. You also allowed heavy cash withdrawals in the C/d A/c of M/s Continental Textile Mills Ltd. Knowing fully well that while opening the C/D A/c. Shri Bharat K. Patel had also given an undertaking that he will not withdraw the amount, save and except for the purpose of payment of dues for the employees under the settlement.

Articles of Charge-II: You purchased two cheques - one on 28.9.1998 and another on 29.9.1998 of Rs.15 lacs each in the newly opened CD A/c No.2023 of Shri Bharat K. Patel and one cheque on 29.9.1998 of Rs.10 lacs in the newly opened CD A/c No.2028 of M/s Continental Textile Mills Ltd., which were returned unpaid. All the three cheques purchased by you were local cheques and were purchased in complete disregard to the Bank's laid down norms and procedure guidelines with regard to purchase of local cheques, and in particular when the amounts of these cheques were much beyond your delegated authority as provided in the scheme of delegation of powers booklet page 10 A to table I-B, at Sr. No.8 and your earlier request TCD of Rs.25 lacs to said party was declined by the Chief Regional Manager. This fact of having exceeded your authority was knowingly not reported by you to higher authorities and it is only after the above 3 cheques amounting to Rs.40 lacs were returned and your efforts to recover the same did not

materialize that you reported the same to higher authorities/controlling Office. Consequently, the Bank's funds to the tune ofRs.37,98,785/- plus interest thereon till date are in jeopardy and no security is available and Bank is likely to suffer a loss to that extent. On 14.9.1998 you also purchased cheques of Rs.15 lacs in the newly opened C/D A/c No.2028 of M/s Continental Textile Mills Ltd, which was much beyond his delegated authority as Manager, Saraspur Branch.

Article of Charge No.III: Current A/c of M/s Mack Plast Packages A/c No.2003 was opened on 2.2.1998. It is observed from the A/c that the TOD in the A/c was allowed continuously from 23.2.1998 and thereafter the A/c never came in credit. Moreover, on average, a debit balance of Rs.2.00 to 2.50 lacs have been allowed in this newly opened A/c continuously, in complete disregard to bank's laid down norms and procedure in this regard. Moreover, 2 cheques of Rs.156000/- and Rs.230000/- were purchased in the said A/c on 31.3.1998 and 4.4.1998 respectively. Both the cheques were returned unpaid. However, instead of debiting these returned cheques to the C/D A/c of M/s Mack Plast Packages, the same were allowed to be kept pending for 3 to 5 months and were finally released for debiting the A/c on 2.7.1998 and 28.9.1998 creating huge debit balance of Rs.648982/-. No reporting of TCD so created was done by him to the higher authorities/controlling office as is required as per the bank's laid down norms. Thus, bank's funds to the tune of Rs.6.89 lacs plus interest have been put to jeopardy and the bank is likely to suffer financial loss to that extent.

Article of Charge No.IV: During the course of the special audit of the Branch, a revenue leakage of Rs.11,8000/- was detected in the C/D A/c of Shri Bharat K. Patel. Due to inapt handling of the above 2 A/cs, our bank had to pay interest of Rs.36980/- to RBI on the adverse clearing caused on the days when number of cheques presented on the above two a/cs were presented and returned by the branch for want of funds, cheque books containing 10000 cheque leaves were also issued in CD account No.2028 of M/s Continental textile Mills Ltd., without any

justification.

6.0 The findings of the Inquiry Officer as stated in the Inquiry Report in respect of the charges are as under:

Regarding Charge No.1: There is no dispute about the documentary evidence produced by the Presenting Officer. Current deposit account of M/s Continental Textile Mills Ltd. was opened at Saraspur Branch on 5.9.1998 is evident from ME-5, ME-6 ME-7. Shri Bharat K. Patel has signed as Executive Director of the company while opening the account. The signatures of the CSO appearing on ME-5 are dated 23.11.1998. It shows that no bank official was responsible for opening of the account between 5.9.1998 and 23.11.1998. If the account was opened by some other official, the CSO as Manager could have asked the concerned staff to put initials in token of opening the account even at later stage, if he wanted to disown opening of account which he could not. As per ME-76, there were very heavy transactions in the account of the company since 5.9.1998 i.e. the date of opening of the account. Further, as per ME-78, on 29.9.1998, the CSO had purchased a cheque in the account for Rs.10,00,000.00 drawn on Development Credit Bank, Revdi Bazaar which was returned unpaid for financial reasons. Thus, he cannot disown knowledge of account with the branch. Moreover, as per his statement of defence dated 1.9.2000 submitted to the enquiry, he was canvassing the accounts for his branch ME_5 is evidence that Shri Bharat K. Patel requested the CSO to open C/D A/c of M/s Continental Textiles Mills Ltd. ME-20 has very categorically pointed out violation of bank laid down norms and procedure with regard to opening of C/D A/c. of the company. It also confirms that Bharat K. Patel was allowed to open and operate the account without ensuring his authority to do so. ME-76 i.e. the statement of account of M/s Continental Textile Mills Ltd. Is a good evidence to confirm that heavy cash withdrawals were allowed from the account which was in violation of High Court order and undertaking given by Shri Patel. This has been confirmed by ME-17 and 20.

Coming to the arguments of CSO, it is observed that the C/D A/c in the name of M/s Continental

Tex. Mills Ltd., was opened on the basis of settlement before the Court, Shri Bharat K. Patel and Shri Mann had submitted affidavits to that effect on which subsequent order of the High Court passed adverse strictures. Court order can authorize to open an account if it is specific in contents. Here, even if it is accepted that such directions were intended by the Court order,opening of current account of a Private Ltd. Company without observing basic formalities is beyond comprehension.

Second argument of the CSO, that obtention of Articles of Association and Memorandum of Association would have been completion of formality without making any difference to the position of Bank's dues, does not carry conviction. It is an argument without any substance dismissing the need of system and procedure. It is better of a logical sense prevails to understand the consequences of deviations from the laid down norms and procedures. The charge No.1 is proved.

6.1 With regard to Charge No.II the findings of the Inquiry Officer are as under:

On the basis of evidence produced by Presenting Officer and also CSO's brief, purchase of cheques as given in the Articles of charge is not disputed. These two accounts were opened on 6.7.98 and 5.9.98. As such the point that these accounts were newly opened, gains support from ME-1 and ME-5. These were local cheques and were returned unpaid by the drawee bank is supported by ME-24, 32, 33, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71.

The cheques were purchased in complete disregard to the Bank's laid down norms and procedure is substantiated by MVV-1 in the Evidence Sheet dated 1.9.2000 as well as by ME-20, 24, 25, 32, 80, 82, 84.

CSO's argument for grant of such facilities does not hold water. He has not rebutted the allegations. He has only given his own reasons for purchase of Cheques.

B."And in particular the amounts of these cheques

were much beyond your delegated authority provided in the scheme of delegation of powers book let page 10-A, of Table I-B at serial No.8 and your earlier request of TOD of Rs.25 lacs to said party was declined by the Chief Regional Manager."

I.A's observations/comments: While this portion of the Charge pertaining to exceeding authority is substantiated by ME-83, the CSO has himself admitted this in ME-23 and 33.

A. TOD limit of Rs.25 lacs to Shri Bharat K.Patel was declined by the Chief Regional Manager on 19.9.98 is supported by ME-32.

B."This is fact of having exceeded your authority was knowingly not reported by you to higher authorities and it is only after the above 3 cheques amounting to Rs.40 lacs were returned and your efforts to recover the same did not materialize that you have reported the same to higher authorities/Controlling Office. Subsequently the Bank's funds to the tune of Rs.37,98,785.00 plus interest thereon till date are in jeopardy as no security is available and bank is likely to suffer a loss to that extent. On 14.9.1998 you also purchased cheques of Rs.15 lacs in the newly opened CD A/c No.2028 of M/s Continental Textile Mills Ltd. Which was much beyond your delegated authority as Manager, Sara spur Branch."

To defend this portion of the charge, CSO has mentioned in the brief that the allegations that Bank is likely to suffer loss in aforesaid transactions is not correct as is evident from DE-2, 3 and 5. Also, in any borrowal account wherein litigation is pending, loss cannot be quantified until the outcome thereof.

Non reporting of TOD is supported by ME-32, 33. It is a matter of record that Bank's funds to the tune of Rs.37, 98,785.00 plus interest thereon till date are in jeopardy. It is substantiated by ME-75 and 76. There is no evidence to prove availability of security to cover the over drawings. The so called security documents on record (ME-10 to 16) are simply useless pieces of paper as they are signed in blank. The arguments

given by defense do not carry any weight. Defense documents are dealing mainly with opinions which are always liable to differ. The cheque for Rs.15 lacs purchased on 14.9.1998 was beyond delegated authority of CSO is substantiated by ME-83. The CSO has himself admitted this in ME-23 and 33. Thus, Charge No.II proved.

6.2 The findings of Inquiry Officer in respect of Charge No.III are as under:

The documents produced by the Presenting Officer before the enquiry are not disputed. It is evident from ME-74 that the Current account of M/s Mac Plast Packages was opened at the branch on 2.2.98 from ME-74, it is revealed that an overdraft of Rs.36100 was allowed by the branch on 23.2.98 and thereafter the party always enjoyed overdraft facility. Account was always in debit. An average debit balance of Rs.2.00 to Rs.2.50 lacs appears in the account. Now, the question remains if the state of affairs in the account was in disregard to Bank's laid down norms and procedure in this regard. Out of evidence adduced by presenting officer before the enquiry ME-80 and ME-85 confirm violation of norms and procedures. ME-80 in particular spells that the norms for grant of temporary overdraft. A perusal of this document vis-`-vis the deviations resorted to by the CSO indicates that lending norms were flouted by CSO. He has claimed in his brief that the lending was within his delegated powers. This is not challenged. But such powers are subject to certain norms and guidelines.

Purchase of two cheques Rs.156000/- and Rs.230000/- on 31.3.98 and 4.4.98 respectively is a matter of record and supported by ME-37, ME-28, ME-33, ME43, 44, 45, 46. These cheques were returned unpaid. This is supported by ME-35, 36, 38, 39, 40, ME-41B, ME-42A, 42B as well as ME-33. The cheques were purchased under instructions from the CSO is supported by ME-44 & 46 as well as ME-29. Reversal entries for these returned cheques were passed on 2.7.98 and 28.9.98. This is evident from ME-37, 38, 39, 40, 77. Debit of party's account due to reversal of Bill purchase upon return of cheques created a debit balance of Rs.648982.00 in the account is supported by

ME-74. Regarding delay in reversal of vouchers to debit party's account, the CSO has put the blame on Shri D.R. Mehta, Dy.Manager (Credit) (ME-28) and Shri Mehta has blamed CSO (ME-29). However, in his statement of defense dated 1.9.2000, CSO has in the same context mentioned on page 4 that the promises of the party about quick realization of these cheques lured him to keep them pending. And due to burden of closing work and tension of CTML's position made him forget this aspect and hence delay. Also in ME-33 it is mentioned that the cheques were kept pending under the impression of recoveries promised by the firm. ME-33 is CSO's reply to the memorandum calling for his explanation. According to the charge, Bank's fund to tune of Rs.6.88 lacs plus interest has been put to jeopardy. This aspect is duly supported by documentary evidence in the form of ME-74. The CSO has mentioned in his statement of defense dated 1.9.2000 that out of the whole amount Rs.1.56 lacs has already been realized.

In general, the arguments even by the CSO in his brief are not relevant to allegations appearing in the Articles of Charge. Nowhere his delegated power has been questioned. Violation of procedural aspects argued by CSO does not get any support from the available evidence. Recovery of any amount does not undo the commission of irregularity. Argument advanced about likely loss does not stand the test of scrutiny, because outcome of legal action depends upon so many factors. Thus, charge No.III is proved.

6.3 With regard to the fourth charge the conclusion of the Inquiry Officer is as under:

From the aforesaid, it is evident that there was disregard to the Bank's laid down norms and procedure. Shri Bharat K. Patel was unduly accommodated by opening of two CD accounts, issuance of cheque books, allowing heavy cash withdrawals in violation of Court of orders and violation of undertaking given by Shri Patel while opening CD A/c of the company. The CSO has purchased cheques of the party exposing the Bank to the tune of Rs.40.00 lacs beyond his delegated powers in violation of Bank's laid down norms and procedures when his request in the past to allow TOD of Rs.25.00 lacs had been declined by the

Regional office. Likewise, two cheques purchased and returned in the account of M/s Mac Plast Packages were kept pending for long and were not reported to higher authorities in violation to Bank's laid down norms and procedures which has the effect of exposing the Bank to serious loss."

6.4 After considering the inquiry report the authority has imposed the following penalties:

Charge No.1: Reduction by 3(three) lower stages in the time scale of pay for 2 year with further direction that you will not earn increment of pay during the period of such Reduction and it will have the effect of postponing the future increments of pay under Regulation 4(f) of Bank of India Officer employees (Discipline & Appeal) Regulations, 1976.

Charge No.II: Dismissal from Bank's service which shall ordinarily be disqualification for future employment under Regulation 5(j) of Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976.

Charge No.III: Dismissal from Bank's service which shall be ordinarily be a disqualification for future employment under Regulation 4(j) of Bank of India Officer Employees Discipline & Appeal) Regulation,1976.

Charge No.IV: Reduction by 1 (one) lower stages in the time of scale of pay for 4(four) years with further direction that you will not earn increment of pay during the period of such reduction and it will have the effect of postponing the future increment of pay under Regulation 4(f) of Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976." I have heard the learned counsel for the respective parties in detail and also perused the relevant record. The records reveal that the charges leveled against the petitioner were proved conclusively by the Inquiry Authority on the basis of the evidence brought out in the inquiry record.

7.0 A bare perusal of the findings of the Inquiry Authority, it is very clear that the inquiry has been conducted in accordance with rules and regulations and principles of natural justice have been observed during

the entire proceedings. There is nothing to show that the departmental proceedings are not conducted in just and fair manner. In the Inquiry Report it is stated that the petitioner attended regular hearing along with his defence assistant. At the conclusion of the inquiry the Presenting Officer was directed to submit his brief by 8.9.2000 and defence to submit brief by 15.9.2000. The Presenting Officer's brief has been received on 12.9.2000. The petitioner has sent Fax message on 2.9.2000 from Ahmedabad informing that he was sending written brief by registered post. However, when the registered letter was received from the petitioner it was not brief but request letter dated 9.9.2000 to call defence witnesses. A list of eleven witnesses was given requesting to issue notice to them to present with documents. There was also a request to recall management's witness. This has been replied to vide letter dated 18.9.2000 giving one more opportunity to submit defence brief by 23.9.2000. Ultimately defence brief was submitted on 19.9.2000. Therefore, I am of the opinion that sufficient opportunity has been given to the petitioner in the departmental proceedings.

7.1 The manner in which the inquiry was conducted shows that the inquiry was conducted in a proper manner and the petitioner has been afforded reasonable opportunities. Therefore I do not find any substance in the contention that the departmental proceedings were held in hot hurry and witnesses of the petitioner could not be examined. The petitioner had engaged an officer posted at Ahmedabad as his defence assistant, who had participated in the inquiry proceedings and defended the case of the petitioner. On 21.8.2000 the inquiry officer had asked the petitioner to submit the list of witnesses and had made it clear that if the witnesses are from outside then in that case the request to examine them will be looked into when the names and details are given. However,till the conclusion of the inquiry proceedings, the petitioner, despite having been given ample opportunities, did not submit any list of his defence witnesses. It is also clear from the record that all management documents were exhibited and the petitioner did not object and/or deny any of the documents submitted by the management. One Mr.P.S. Rohitkumar was examined on 1.9.2000 during the inquiry proceedings and the case of management was declared as over. The said witness was also cross-examined by the defence. Apart from that the petitioner has signed when the Inquiry Officer has declared that the inquiry is over. Naturally as soon as the inquiry is over, it is open for the inquiry officer to conclude the hearing and submit the inquiry report to

the disciplinary authority. Under the circumstances it cannot be said that the departmental proceedings were held in hot hurry and witnesses of the petitioner could not be examined.

7.2 As regards the contention of approbating and reprobating, it is required to be noted that the petitioner was holding the post of Manager. The administrative decision was taken not to keep him in Gujarat Zone. Since he was transferred from the said place, it is open for the respondent to conduct the inquiry at the other place. In my opinion, this court cannot examine the question whether the petitioner was required to be transferred or not. Moreover, the bank cannot take risk of keeping a person who is involved in certain irregularities and the bank had lost confidence in the petitioner. Therefore, I do not find any substance in the contention that the inquiry was conducted at Jharkand which has caused prejudice to the petitioner.

7.3 I also do not find any substance in the contention that the management witnesses were not allowed to be examined fully. I am of the opinion that the management witness was cross-examined, but it is for the inquiry officer to allow a particular question. It is requried to be ntoed that even while sending a fax letter on 2nd September 2000 from Ahmedabad the petitioner has not asked fro examination of his witnesses. It is for the first time on 9th September 2000 he requested to call defence witnesses which is nothing but an after thought.

7.4 As regards the other contention that the statement of the petitioner was not recorded and defence of the petitioner was not found on record, I am of the opinion that the management witness was cross-examined, but it is for the inquiry officer to allow a particular question. In any case, if it is a question not concerned with particular facts of the case it is open for the Inquiry officer whether that question is required to be recorded or not. Such action will not be open for judicial review. Moreover, the Inquiry officer has recorded the statement as contemplated under Regulation 16.

7.5 The petitioner has also raised a contention that the order of dismissal was passed by the person who has not appointed the petitioner and the respondent no.2 had no authority to dismiss the petitioner from service. In this connection learned counsel for the respondent stated that the Chief Regional Manager, Giridih Region and

disciplinary authority, had initiated disciplinary actions. At the time of initiation of disciplinary actions, the petitioner was Scale-III Officer and as per the schedule of Disciplinary/Appellate/Review authority given in the BOI Officer Employees' (Discipline & Appeal) Regulations, 1976, the Chief Regional Manager was empowered to initiate disciplinary actions against Scale-III officers. On 1.6.2001, on account of reorganisation of administrative set up of the respondent Bank, the Giridih Region was abolished and Giridih Zone was created and the administrative head of the Zone came to be known as Zonal Manager, who is Scale-V and competent to function as disciplinary authority. In view of this position, I do not find any merits in the contention of the petitioner that the order of dismissal was passed by the person who has not appointed the petitioner.

7.6 The last contention of the petitioner is that the penalty imposed upon the petitioner is disproportionate to the charges levelled against the petitioner. A bare perusal of the record shows that serious charges were levelled against the petitioner and the said charges were proved. On account of the misconduct of the petitioner severe loss has been caused to the petitioner. It was also found by the Inquiry Officer that the petitioner has deliberately not followed the instructions of higher officer and has allowed to encash the demand draft which was beyond his delegated authority. The disciplinary authority and the Appellate authority are the best authorities to weigh the seriousness of the misconduct and to impose the penalty. Therefore, this court cannot substitute the penalty imposed by the Disciplinary Authority which was confirmed by the Appellate Authority.

8.1 Learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of Ministry of Finance Vs. S.B. Ramesh, reported in AIR 1998 SC 853 wherein the Supreme Court held as under:

> "On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it."

8.1.1 In the aforesaid case the charge was that the delinquent has been living in a manner unbecoming of a

Government servant or that he has exhibited adulterous conduct by such living. In that case even the another woman was not examined which has got direct nexus with the alleged charge. However, in the present case there is nothing to show that certain witness has not been examined which has caused serious prejudice to the case of the petitioner. On the facts of the case, it is clear that reasonable opportunity has been afforded to the petitioner and it cannot be said that the inquiry conducted against the petitioner was totally unsatisfactory. Therefore, the aforesaid decision would of no help to the petitioner.

8.2 Learned counsel for the petitioner has relied upon a decision of this Court dated 8th December 2000 passed in Special Civil Application No.1209 of 1992 wherein it is held that the disciplinary authority has not pointed out even by a single sentence as to why the penalty of dismissal has been selected. In that case there is no finding that there was dishonest intention or dishonest act on the part of the petitioner therein. Therefore the order of dismissal was quashed and the matter was remanded for imposing lighter punishment than the punishment of dismissal. Further, in that case it was not the case that the delinquent was involved for disobeying the instructions of the superior officer and there were no allegation of misappropriation or loss due to the conduct of the officer.

8.2.1 In the present case the petitioner has deliberately not followed the instructions of the higher officer and has allowed to encash the demand draft which was beyond his delegated authority. As a result of the misconduct of the petitioner huge loss has been caused to the bank. The amount involved is on higher side. Therefore, the petitioner cannot rely upon the ratio laid down in the aforesaid judgement of this Court in Special Civil Application No.1209/1991. For the very same reason the decision of this court dated 13.8.2004 passed in Special Civil Application No.6220/2001 will not be of any assistance to the petitioner inasmuch as the latter decision has followed the decision in the case of Special Civil Application No.1209/1992.

8.2.1 In this connection it is profitable to note a decision of the Supreme Court in the case of Regional Manager, UPSRTC Vs. Hotilal, reported in AIR 2003 SC 1462 (=2003 SCC (L&S) 463) wherein it is held as under:

"10. ...A mere statement that it is disproportionate would not suffice. A party

> appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding order of dismissal."

8.3.1 In the aforesaid decision the Supreme Court also reiterated the principle that the disciplinary authority and on appeal the appellate authority, being fact finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.

8.3.2 In the present case the petitioner was dealing with public money or is engaged in financial transactions. Therefore, I am of the opinion that the penalty imposed by the competent authority is just and proper.

8.4 Learned counsel for the petitioner relied upon a decision of this Court in the case of Jagdischandra Maganlal Trivedi Vs. State Bank of India, reported in 2004(2) GLH 514. In the said decision it is held that if the punishment imposed by the disciplinary authority shocks the conscience of the Court, the Court can substitute the penalty with its own and while coming to such conclusion if the Court apprises the evidence on the basis of which the order is made such exercise cannot be termed as reappreciaiton of evidence.

9.1 As against the aforesaid decision learned counsel for the respondents relied upon a decision of the Supreme Court in the case of Tripura Gramin Bank Vs. Tarit Baran Roy, reported in (2001)10 SCC 70. In paragraph 4 the Supreme Court held as under:

> "4. .... Having examined the impugned judgement of the High Court we have no manner of doubt that the High Court grossly erred in law in interfering with the quantum of punishment on the application of the principle that the punishment is grossly disproportionate tot he quantum of delinquency, obviously referable to Section 11-A of the Industrial Disptues Act. In our opinion, those principles engrafted in Section 11-A of the Industrial Disputes Act cannot be engrafted into the disciplinary proceedings either in relation to a government servant or other employee whose service conditions are governed by a set of rules and not the provisions of the Industrial Disputes Act. That apart, in exercise of second appellate jurisdiction, it was not open for the High Court to reappreciate the materials on the basis of which the enquiry officer arrived at his conclusion, and come to a different finding and on this score also the impugned judgement is vitiated. In the aforesaid premises, the impugned judgement of the High Court in second appeal cannot be sustained. We accordingly quash the same and the suit stands dismissed. This appeal is allowed."

9.2 In view of the above decision, it is not open for this court to reappreciate the materials on the basis of which the enquiry officer arrived at his conclusion and to interfere with the quantum of punishment.

9.3 Learned counsel for the respondents has also relied upon a decision of the Supreme Court in the case of Chairman & Managing Director, United Commercial Bank Vs. P.C. Kakkar, reported in (2003)4 SCC 364, wherein it is held that punishment imposed by disciplinary authority, unless shocking to the conscience of the court/tribunal, cannot be made subject to judicial review. On the facts of the present case there is nothing to show that the punishment imposed by the disciplinary authority is shockingly disproportionate so as to cause interference in the present matter.

9.4 Learned counsel for the respondent has relied upon a decision of the Supreme Court in the case of Railway Board, New Delhi VS. N. Singh, reported in AIR 1969 SC 966 wherein it is held that the High Court in certiorari jurisdiction would not interfere with the conclusion arrived at by the Enquiry Committee.

9.5 Learned counsel for the respondent has relied upon a decision of the Supreme Court, in the case of Additional District Magistrate (City) Agra Vs.Prabhakar Chaturvedi and Another, reported in (1996) 2 SUPREME COURT CASES 12, while dealing with a case of temporary misappropriation, the Supreme Court has held that the order of dismissal as imposed on the employee was just and proper.

9.6 Learned counsel for the respondent has relied upon a decision of the Supreme Court in the case of Disciplinary authority-cum-Regional Manager and others Vs. Nikunja Bihari Patnaik reported, in (1996) 9 SUPREME COURT CASES 69,while dealing with a case of various charges of misconduct at paragraph 8 of the judgment, the Supreme Court held that the request of imposing any other punishment other than dismissal has been considered with the care it deserves, but regret inability to accede to the same.

9.7 Learned counsel for the respondent has relied upon a decision of the Supreme Court in the case of Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others, reported in (1997) 1 SUPREME COURT CASES 299, even in case of misappropriation of a very small sum of Rs.1440/-,it has been held that the petitioner having committed misappropriation of the public money his removal from service is an appropriate order and that there is no illegality in the order passed by the Tribunal.

10.0 To sum up, a bank officer is required to exercise higher standards of honest and integrity. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. In view of the aforesaid discussion I am of the opinion that looking to the gravity of the charges proved against the petitioner, the punishment imposed upon him is not shockingly disproportionate so as to cause interference.

10.1 It is also a settled law that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or

was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. Learned counsel for the petitioner could not point out any infirmity in the conduct of the inquiry or the resultant punishment. There is nothing on record to show that any prejudice was caused during the departmental inquiry. Therefore this is not a fit case to cause interference under Article 226 of the Constitution of India.

10.2 In the case of Rohit S. Mankad Vs. Bank of India in Special Civil Application NO.3693/98 this Court has taken a similar view and confirmed the penalty of compulsory retirement.

11.0 In view of the aforesaid discussion I find that the departmental proceedings were conducted in just and fair manner, reasonable opportunity was given tot he petitioner to defend his case, the petitioner was also allowed to cross-examine the witnesses and the there are no infirmities in the findings arrived at by the Inquiry Officer. I also find that the penalty imposed upon the petitioner is in accordance with the rules and regulations and does not require any interference.

11.1 In the premises aforesaid, there are no substance in the present petition. Accordingly the petition is rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]